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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,619	11/15/2000	Rebecca S. Busch	MBA-P-00-001	3814

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EXAMINER

KOPPIKAR, VIVEK D

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/713,619	<b>Applicant(s)</b> BUSCH, REBECCA S.	
	<b>Examiner</b> Vivek D Koppikar	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Status of Application***

1. This communication is in response to the application filed on November 16, 2000. The examiner acknowledges the Information Disclosure Statement (IDS) statement filed by the applicants on February 9, 2001. Claims 1-12 are pending in the application and have been examined.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

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In the present case, claims 1-3 recite abstract ideas. The recited steps of merely training personnel to audit a business at a location wherein a transaction occurs at a location associated with the business does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed without the use of any technological elements (e.g. computer, database). These steps only constitute an idea of training personnel to audit a business.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention trains personnel to audit a business and although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 1 is deemed to be directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,529,876 to Dart in view of US Patent Number 5,970,482 to Pham and in further view of US Patent Application Publication 2002/0010664 to Rabideau.

Dart is directed towards an electronic template medical records coding system and teaches steps for auditing medical records. Pham is directed towards data mining,

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including data mining in auditing processes. Rabideau is directed towards a method and system for conducting a target audit in a high volume transaction environment.

As per claims 1-3, Dart teaches the of auditing the business at the location of the transaction, collecting data at the location of the transaction, auditing records as the records are created by the transaction of the business and auditing the transaction of the business (Col. 9, Ln. 43-46 and Col. 13, Ln. 29-Col. 14, Ln. 10).

Dart fails to teach the step of choosing and training personnel to conduct the above mentioned steps; however, this feature is well known in the art and the examiner takes Official Notice on this limitation. It would have been obvious to one of ordinary skill in the art at the time of the invention to have chosen and trained personnel to conduct the above mentioned steps in the method taught by Dart with the motivation of providing a means of conducting the various steps of the audit.

Further, since choosing and training personnel, in general, has clearly existed in the art prior to Applicant's claimed invention and the courts have held that even if a patent does not specifically disclose a particular element, said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention. *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

As per claim 4, which is directed towards a method for auditing a business at a location wherein a transaction occurs at the location associated with the business, Dart teaches the steps of conducting a general audit of a business (Col. 9, Ln. 43-46), entering information collected during the general audit into a database (Col. 9, Ln. 43-46) and

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establishing a specification code for each function of a business (Col. 13, Ln. 29-Col. 14, Ln. 10).

Dart fails to teach data mining information collected from the general audit; however, this feature is known in the art as evidenced by Pham. Pham teaches the steps of data mining information collected from a general audit and creating an auditing profile (chart) once the data has been mined (Col. 27, Ln. 40-49). At the time the invention was made, one of ordinary skill in the art would have been motivated to add this data mining feature to the system of Dart in order to improve the accuracy of the auditing as recited in Pham (Col. 27, Ln. 46-48).

Dart and Pham fail to teach the following steps: a step of prioritizing an area in which a significant error occurs (in an auditing process), choosing a pilot area associated with the area in which the significant error occurs to test the auditing chart, auditing the pilot area with the auditing chart at the location of the transaction, collecting information during the auditing of the pilot area, modifying the auditing of the business on-site based on the information collected in the pilot area, updating the code and the auditing chart and auditing the pilot area with the updated code and auditing chart. The examiner interprets these steps as meaning a process by which if a significant auditing error is occurring in an area then the auditing program focuses on this area (pilot area) and develops a revised auditing chart or formula which produces fewer errors and tests the pilot area to see if the updated auditing chart reduces the error in the area and finally updates the auditing chart and performs an updated audit (with the new chart). These steps are known in the art as evidenced by Rabideau. Rabideau teaches the steps of analyzing a random sample (pilot area) where error has occurred and labeling those areas with error tickets. Error tickets

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are a profile of the errors. Modifications to the error tickets are possible to improve the auditing process (Sections [0034], [0046], and [0056]-[0057]). At the time the invention was made, one of ordinary skill in the art would have been motivated to add the error profile modification feature to the auditing system of Dart and Pham in order to have provided the user with a means of customizing and improving the audit process.

As per claims 5-6, Dart does not mention the frequency of an audit, however, the examiner takes the position that since Dart is auditing patient medical records so a health care practitioner can be reimbursed (Col. 2, Ln. 5-10) the audit takes place on a daily basis since new patients come to consult with practitioners every day.

As per claim 7, in Dart the records that are audited are medical records which include clinical and financial records (Col. 4, Ln. 36-45).

As per claim 8, in Rabideau the random sample error database (pilot area) (Section [0036]) contains more than one sample of transactions so the examiner takes the position that the process of improving the audit takes place with each sample.

9. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rabideau in view of Pham and in further view of US Patent Application Publication 2002/0002475 to Freedman, which is directed towards an automated insurance system and method in which the method includes an auditing step.

Rabideau teaches the steps of conducting an audit of a process to identify process errors associated with a business (Sections [0056]-[0057], collecting errors from the audit [Section [0056]], enters the errors into a database (Section [0057])).

Rabideau does not teach or suggest that the audit is continuous; however this is known in the art as evidenced by Freedman. Freedman teaches an insurance audit system

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which is continuous (Section [0167]). At the time the invention was made, one of ordinary skill in the art would have been motivated to modify the auditing process of Rabideau to make it a continuous process so that a user would have been enabled to monitor the financial conditions of a business 24 hours a day and seven days a week , as recited in Freedman (Section [0167]).

Rabideau in view of Freedman do not teach or suggest that the data is mined for errors in the auditing process and that a flow chart is created from the data mining in which the flow chart becomes a case management tool. Rabideau in view of Freedman also fail to teach and suggest the steps of migrating the errors with the case management tool. However, the above recited steps are known in the art as evidenced by Pham. Pham teaches Pham teaches the steps of data mining information collected from a general audit and creating an auditing profile (flow chart) once the data has been mined. The profile is used as a case management tool (Knowledge Model and Evaluation Process). The errors are incorporated into generating the case management tool (Col. 27, Ln. 40-Col. 28, Ln. 14) . At the time the invention was made, one of ordinary skill in the art would have been motivated to add this data-mining feature to the system of Dart in order to improve the accuracy of the auditing as recited in Pham (Col. 27, Ln. 46-48).

As per claim 10, in Rabideau the auditing tool is used to find financial errors but can also be used in any environment with a high volume of transactions which the examiner interprets to include medical practices and other businesses (Section [0034]).

10. Claims 11 is rejected as being unpatentable over Dart in view of Pham and in further view of Rabideau.



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Dart teaches providers (health care providers/personnel) (Col. 2, Ln. 46-59) associated with the audit of a business and means for establishing a specification code for each function of a business (Col. 13, Ln. 29-Col. 14, Ln. 10).

Dart fails to teach data mining information collected from the general audit; however, this feature is known in the art as evidenced by Pham. Pham teaches the steps of data mining information collected from a general audit and creating an auditing profile (chart) once the data has been mined (Col. 27, Ln. 40-49). At the time the invention was made, one of ordinary skill in the art would have been motivated to add this data-mining feature to the system of Dart in order to improve the accuracy of the auditing as recited in Pham (Col. 27, Ln. 46-48).

The combined system of Dart in view of Pham fail to teach or suggest a pilot area of the business to test the auditing chart. Dart and Pham fail to teach the step of choosing a pilot area associated with the area in which the significant error occurs to test the auditing chart; however, Rabideau teaches the steps of analyzing a random sample (pilot area) where error has occurred and labeling those areas with error tickets.

At the time the invention was made, one of ordinary skill in the art would have been motivated to modify the system of Dart in view of Pham by including a step of selecting a pilot area where the auditing chart would be tested in order to have provided the user with a means of customizing and improving the audit process.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rabideau in view of Pham and in further view of US Patent Application Publication 2002/0002475 to Freedman and includes the same limitations as claim 9; however claim 12 is directed

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towards a system for the virtual case management of a business rather than a method  
(Refer to the paragraph for the rejection of Claim 9 above.)

### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

“Wiz Rule Offers Next Generation Audit Cleansing Tool to Improve Your Data Quality,” teaches a system which audits data and finds formulas by determining relationships between variables.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Vivek Koppikar** whose telephone number is (703) 305-5356. The examiner can normally be reached on Monday-Friday from 8 AM to 5 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (703) 305-9588. The fax phone number for the organization where this application or proceeding is assigned are (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status


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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*vnk*

Vivek Koppikar

9/20/04

  
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